IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BELIA CADIZ, individually and on behalf of all others similarly situated,	)	
	)	Case No. 17-cv-06362
PLAINTIFF,	)	
vs.	)	
EDUCATIONAL CREDIT MANAGEMENT CORPORATION,	)	
	)	Jury Demanded
DEFENDANT.	)	

CLASS COMPLAINT

Plaintiff, Belia Cadiz, individually and on behalf of all others similarly situated, brings this action under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq*. ("FDCPA"), and alleges:

JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to § 1692k(d) of the FDCPA, and 28 U.S.C. § 1331.

2. Venue is proper in this District because parts of the acts and transactions occurred here and Defendants transact substantial business here.

STANDING

3. Defendant sent Plaintiff collection letters via electronic mail ("email") that failed to provide her statutorily required notice of rights under the FDCPA.

4. Plaintiff has a congressionally defined right to receive all communications from a debt collector with adequate disclosure of her rights under the law. *E.g. Genova v. IC Sys., Inc.*, No. CV 16-5621, 2017 WL 2289289, at *3 (D.N.J. May 25, 2017).

5. Plaintiff has thus suffered an injury as a result of Defendant's conduct, giving rise to standing before this Court. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1544 (2016), quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 580 (1992) (Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before.); *Bellwood v. Dwivedi*, 895 F. 2d 1521, 1526-27 (7th Cir. 1990) ("Congress can create new substantive rights, such as a right to be free from misrepresentations, and if that right is invaded the holder of the right can sue without running afoul of Article III, even if he incurs no other injury[.]").

PARTIES

6. Plaintiff, Belia Cadiz, formerly known as Belia Duarte ("Plaintiff"), is a resident of the state of Illinois from whom Defendant attempted to collect a delinquent consumer debt allegedly owed for a defaulted student loan account. Plaintiff is thus a consumer as that term is defined in 15 U.S.C. § 1692a(3) of the FDCPA.

7. Defendant Educational Credit Management Corporation, ("ECMC") is a nonprofit organization with its principal office located at 1010 Dale St N, St. Paul, Minnesota, 55117. ECMC does not have a registered agent in Illinois. (Exhibit A, Record from Minnesota Secretary of State).

8. As stated on its website, ECMC is a "nonprofit company that provides support for the administration of the Federal Family Education Loan Program as a student loan guaranty agency." *See* http://www.ecmcgroup.org/about-us.htmlMinnesota corporation, viewed on August 31, 2017.

9. ECMC achieves its stated mission by purchasing federally backed consumer student loan accounts after the accounts go into default.

10. ECMC derives all of its revenue from the purchase and collection of defaulted student loans, and therefore its principal purpose is the collection of debts. ECMC is a "debt collector" as defined in 15 U.S.C. § 1692a(6) of the FDCPA.

11. ECMC does not hold a collection agency license from the State of Illinois.

FACTUAL ALLEGATIONS

12. According to Defendant, Plaintiff incurred an alleged debt for goods and services used for personal purposes, originally for a federally backed student loan account taken out with Fifth Third Bank ("alleged debt"). The alleged debt is a "debt" as that term is defined at § 1692a(5) of the FDCPA.

13. Due to her financial circumstances, Plaintiff could not pay any debts, and the alleged debt went into default.

14. ECMC subsequently purchased the account sometime after the alleged default.

15. On or about December 26, 2017, ECMC sent a collection letter via email ("Letter") to Plaintiff regarding the alleged debt. (Exhibit B, Initial Letter).

16. The Letter conveyed information regarding the alleged debt, including an ECMC account number assigned to the alleged debt.

17. The Letter was thus a communication as that term is defined at §1692a(2) of the FDCPA.

18. The Letter was ECMC's initial communication with Plaintiff.

19. The Letter did not include the amount of the alleged debt, the name of the creditor to whom the debt is owed, or the notices regarding Plaintiff's rights within thirty-days of the letter to dispute the alleged debt, to obtain verification of the alleged debt, and to request the name and address of the original creditor.

20. Plaintiff did receive another letter from ECMC within 5 days of the Initial Letter, which included the information stated in §1692g(a).

21. 15 U.S.C. § 1692g(a) of the FDCPA provides as follows:

> **(a) Notice of debt; contents**
>
> **Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—**
>
> **(1) the amount of the debt;**
>
> **(2) the name of the creditor to whom the debt is owed;**
>
> **(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;**
>
> **(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and copy of such verification or judgment will be mailed to the consumer by the debt collector; and**
>
> **(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor. . . .**

22. ECMC failed to provide the proper notices of Plaintiff's rights within five days of the initial communication with Plaintiff, in violation of 15 U.S.C. § 1692g(a)(1)-(5) of the FDCPA.

23. Nowhere in ECMC's Initial Letter does it notify plaintiff that ECMC is a debt collector attempting to collect a debt and any information obtained will be used for that purpose.

24. 15 U.S.C. § 1692e of the FDCPA provides as follows:

> **A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is in violation of this section:**
>
> **. . .(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in the subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action. . . .**

25. ECMC used false, deceptive, or misleading representation in violation of § 1692e(11) of the FDCPA, when it failed to notify Plaintiff in its Initial Letter that ECMC is a debt collector attempting to collect a debt and any information obtained would be used for that purpose.

26. Beginning on or about January 9, 2017, through March 3, 2017, ECMC sent several collection letters via email ("Subsequent Letters") directly to Plaintiff regarding the alleged debt. (Group Exhibit C, Subsequent Letters).

27. The Subsequent Letters conveyed information regarding the alleged debt, including an ECMC account number assigned to the alleged debt.

28. Each Subsequent Letter was thus a communication as that term is defined at §1692a(2) of the FDCPA.

29. ECMC did not disclose that the communication was from debt collector in any of the Subsequent Letters sent to Plaintiff.

30. 15 U.S.C. § 1692e of the FDCPA provides as follows:

> **A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is in violation of this section:**

> **. . .(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in the subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action. . . .**

31. ECMC used false, deceptive, or misleading representation in violation of § 1692e(11) of the FDCPA, when it failed to disclose that the communication was from debt collector in any of the Subsequent Letters sent to Plaintiff.

32. ECMC's conduct was not incidental to its fiduciary obligation to the Department of Education as it was acting solely as a collection agent.

33. Therefore, ECMC's actions violate the FDCPA. *See Rowe v. Educ. Credit Mgmt. Corp.*, 559 F.3d 1028, 1036 (9th Cir. 2009).

34. Defendant's collection communications are to be interpreted under the "unsophisticated consumer" standard. *See Gammon v. GC Services, Ltd. Partnership*, 27 F.3d 1254, 1257 (7th Cir. 1994).

CLASS ALLEGATIONS

35. Plaintiff, Belia Cadiz, brings this action individually and on behalf of two classes described as follows:

a. Class A: (1) all persons similarly situated in the State of Illinois (2) from whom Defendant attempted to collect on a defaulted student loan debt (3) using an initial letter substantially similar to that of Exhibit B; and

b. Class B: (1) all persons similarly situated in the State of Illinois (2) from whom Defendant attempted to collect on a defaulted student loan debt (3) using subsequent letters substantially similar to that of Group Exhibit C.

36. As these letters are form letters, the Classes each likely consist of more than 35 persons from whom Defendant attempted to collect a debt using the Initial Letter attached as Exhibit B and Subsequent Letters attached as Group Exhibit C.

37. Plaintiff Cadiz's claims are typical of the claims of the Classes. Common questions of law or fact raised by this class action complaint affect all members of the Classes and predominate over any individual issues. Common relief is therefore sought on behalf of all members of the Classes. This class action is superior to other available methods for the fair and efficient adjudication of this controversy.

38. The prosecution of separate actions by individual members of each of the two Classes would create a risk inconsistent or varying adjudications with respect to individual members of each Class would, as a practical matter, either be dispositive of the interests of other members of the Class not party to the adjudication, or substantially impair or impede their ability to protect their interests.

39. Plaintiff Cadiz will fairly and adequately protect and represent the interests of the Classes. The management of the class action proposed is not extraordinarily difficult, and the factual and legal issues raised by this class action complaint will not require extended contact with the members of the Classes, because Defendant's conduct was perpetrated on all members of the Classes and will be established by common proof. Moreover, Plaintiff Cadiz has retained counsel experienced in class action litigation including class actions brought under the FDCPA.

COUNT I- FAIR DEBT COLLECTION PRACTICES ACT

40. Plaintiff re-alleges above paragraphs as if set forth fully in this count.

41. ECMC failed to provide the proper notices of Plaintiff's rights within five days of the initial communication with Plaintiff, in violation of 15 U.S.C. § 1692g(a) of the FDCPA.

42. ECMC used false, deceptive, or misleading representation in violation of § 1692e(11) of the FDCPA, when it failed to notify Plaintiff in its initial letter that ECMC is a debt collector attempting to collect a debt and any information obtained would be used for that purpose.

43. ECMC used false, deceptive, or misleading representation in violation of § 1692e(11) of the FDCPA, when it failed to disclose that the communication was from debt collector in any of the Subsequent Letters sent to Plaintiff.

44. As a result of Defendant's violations of the FDCPA, Plaintiff is entitled to an award of statutory damages and reasonable attorney fees and costs.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in favor of Plaintiff Cadiz and the class members and against Defendant as follows:

A. Statutory damages in favor of all class members pursuant to 15 U.S.C. § 1692k(a)(2);

B. Costs and reasonable attorney fees pursuant to 15 U.S.C. § 1692k(a)(3);

C. Such other or further relief as the Court deems proper.

JURY DEMAND

Plaintiff demands trial by jury.

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